



Office of the City Attorney

Susan Segal
City Attorney

City Hall, Room 210
350 South 5th Street
Minneapolis, MN 55415

Office 612 673-2010
Civil Division Fax 612 673-3362
Criminal Division Fax 612 673-2189
CPED Fax 612 673-5112
TTY 612 673-2157

May 6, 2010

Minnesota Department of Health
Division of Environmental Health
Attn: Commissioner of Health
P.O Box 64975
St. Paul, MN 55164

RE: Environmental Health- Drinking Water Protection
Delegation Agreement

Dear Commissioner:

Please find enclosed the Opinion Letter from the Minneapolis City Attorney's Office regarding the ordinance and enforcement authority to implement the Safe Drinking Water Act as it relates to Transient Water Systems pursuant to the proposed delegation agreement between the Minnesota Department of Health and the City of Minneapolis.

Respectfully,


Lee C. Wolf

Assistant City Attorney
MN Atty. ID #0252505
350 S. 5th Street, Room 210
Minneapolis, MN 55415
612-673-2359

cc: Curt Fernandez

OPINION LETTER

Pursuant to a review of the proposed new Drinking Water Protection Delegation Agreement the Minneapolis City Attorney's Office was requested to write an opinion letter addressing the City of Minneapolis' ordinance and enforcement authority to implement the Safe Drinking Water Act as it relates to Transient Water Systems.

A review of the Minneapolis Code of Ordinances (M.C.O.), specifically, Chapter 48 Minneapolis Watershed Management Authority, shows no specific adoption of Minnesota Rules Chapter 4720. M.C.O. § 48.20 does make Minnesota Rules (2001), Chapters 4715, 4725, 7035, 7037, 7041, 7042, 7044, 7045, 7048, 7050, 7056, 7060, 7080, 7100, 7105, 7150, and 7151, and subsequent updates, part of M.C.O. Chapter 48.

Although there is no current citation to Rule 4720, the City *does* possess the enforcement authority to implement and enforce the proposed Delegation Agreement. M.C.O. § 48.70 lists the powers and duties of the Minneapolis Watershed Authority and states that "Under direction of the city council, the authority shall interpret, execute, and enforce the provisions of this chapter. Powers and duties of the authority shall include, but shall not be limited to the following:

11. The authority shall administer the Minneapolis Delegated Well Program including: processing well applications, issuing permits, conducting field inspections, collecting fees, *and code enforcement pursuant to any City Delegation Agreement with the state.* (Emphasis added).

M.C.O. 48.50 makes any violation of Chapter 48 punishable under M.C.O. § 1.30(a) which states: Penalties. (a) Generally. Every person convicted of a violation of any provisions of this Code, except as hereinafter qualified [in subsection (b) or expressly provided elsewhere in the Code,] shall be punished by a fine of not to exceed seven hundred dollars (\$700.00) ~~or by imprisonment for not to exceed ninety (90) days or both.~~ Each day's continuation of a violation shall constitute a separate offense. In addition to any criminal prosecution, violations of the provisions in Chapter 48 are subject to

administrative enforcement actions pursuant to Chapter 2, Administrative Enforcement and Hearing Process.

The City, pursuant to its administration and enforcement of the Delegation Agreement, is willing to amend M.C.O. § 48.20 to make Chapter 4720 of the Minnesota Rules a part of M.C.O. Chapter 48.

A complete copy of M.C.O. Chapter 48 is enclosed for review.

LCW

CHAPTER 48. MINNEAPOLIS WATERSHED MANAGEMENT AUTHORITY*

***Editor's note:** Ord. No. 2000-Or-016, § 1, adopted April 7, 2000, repealed Ch. 48, §§ 48.10--48.110, which pertained to water pollution. Ord. No. 2000-Or-017, § 1, adopted April 7, 2000, amended the Code by adding provisions designated as a new Ch. 48 to read as herein set out. See the Code Comparative Table. Subsequently, Ord. No. 2002-Or-169, adopted Nov. 8, 2002, amended Ch. 48. See the Code Comparative Table for a detailed analysis of inclusion.

48.10. Definitions. (a) The words used in this chapter shall have the meanings given in Minnesota Statutes and Minnesota Rules, except where the context clearly shows otherwise. Wherever the word "agency" or "Minnesota Pollution Control Agency" is used in Minnesota Rules as incorporated into this chapter by section 48.20, it shall be held to mean the City of Minneapolis. Wherever the word "commissioner" is used in Minnesota Rules, as incorporated into this chapter by section 48.20, it shall be held to mean the assistant city coordinator of regulatory services or the assistant city coordinator's authorized agent. State definitions shall include, but shall not be limited to the following:

Abate means to lower, depreciate, reduce, or eliminate contaminants or lower, depreciate, reduce, or eliminate actions that may lead to pollution.

Aboveground storage tank system means any one or a combination of containers, vessels, and enclosures, including structures and appurtenances connected to them, that is used to contain or dispense regulated substances, and that is not an underground storage tank. An aboveground tank includes rail cars, and trucks.

Boring means a hole or excavation that is not used to extract water and includes exploratory borings, environmental bore holes, vertical heat exchangers, and elevator shafts.

Contaminated soil means any soil contaminated with petroleum, hazardous waste, or one or more pollutants in concentrations that exceed natural background levels as determined through an environmental assessment and laboratory analysis.

Dilution means any act of thinning down or weakening a concentration of a substance by mixing or adding a liquid, solid, semisolid, or gas.

Discharge means the addition of any pollutant to the waters of the state or to any disposal system.

Disposal system means a system for disposing of sewage, industrial waste and other wastes, and includes sewer systems and treatment works.

Flammable liquid shall have the meaning given by the U.S. Occupational Health and Safety Administration (OSHA) which defines a flammable liquid as "any liquid having a flash point below one hundred (100) deg. F. (37.8 deg. C.), except any mixture having components with flash points of one hundred (100) deg. F. (37.8 deg. C.) or higher, the total of which make up ninety-nine (99) percent or more of the total volume of the mixture. Flammable liquids shall

be known as Class I liquids."

Hazard means anything capable of causing, or contributing to an adverse effect or event. The hazard associated with a suspected toxic substance is contingent on both its level of toxicity and degree of exposure to the substance.

Hazardous material means:

- (1) a substance listed in Code of Federal Regulations, title 40, part 302, including petroleum under subpart 36, item C, but not including:
 - a. a hazardous waste listed or identified under Code of Federal Regulations, title 40, part 261;
 - b. petroleum under subpart 36, item A, B, or D; or
 - c. a substance that is not liquid at a temperature of 60 degrees Fahrenheit and pressure of 14.7 pounds per square inch absolute; or
- (2) any mixture of substances identified in item (1) and petroleum, unless the amount of the substance identified in item a) is de minimus.

Substances identified in items (1) and (2) which also meet the definition of petroleum are considered hazardous materials.

Hazardous waste means any refuse, sludge, or other waste material or combinations of refuse, sludge or other waste materials in solid, semisolid, liquid, or contained gaseous form which because of its quantity, concentration, or chemical, physical, or infectious characteristics may:

- (1) cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness; or
- (2) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed. Categories of hazardous waste materials include, but are not limited to: explosives, flammables, oxidizers, poisons, irritants, and corrosives. Hazardous waste does not include source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended.

Industrial waste means any solid, liquid, or other wastes, resulting from any industrial, manufacturing, or business process, or from the development, recovery, or processing of a natural resource, which requires special handling or processing prior to disposal.

Leak means the uncontrolled passage or escape of liquid or gaseous substances through a break or flaw in a container or system.

Monitoring well means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed to extract groundwater for physical, chemical, or biological testing. This includes a groundwater quality sampling well.

Other wastes mean garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, oil, tar, chemicals, dredged spoil, solid waste, incinerator residue, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, cellar dirt or municipal or agricultural waste, and all other substances not included within the definitions of sewage and industrial waste set forth in

this chapter which may pollute or tend to pollute the waters of the state.

Out of service well is any well, excluding monitoring and recovery/remedial wells, that is no longer being used to extract groundwater and shall include, but shall not be limited to: domestic drinking water wells; nontransient, noncommunity public water supply wells; air cooling wells; industrial wells; or irrigation wells.

Pollutant means any "pollutant" defined in section 502(6) of the Clean Water Act. Pollutants may include, but are not limited to the following:

- (1) Residential, commercial and industrial waste (such as fuels, solvents, detergents, plastic pellets, hazardous substances, fertilizers, pesticides, slag, ash and sludge).
- (2) Metals such as cadmium, lead, zinc, mercury, silver, nickel, chromium, copper and non-metals such as phosphorous and arsenic.
- (3) Petroleum hydrocarbons (such as fuels, lubricants, surfactants, waste oils, solvents, coolants and grease).
- (4) Excessive eroded soil, sediment, and particulate materials in amounts that may adversely affect the beneficial use of the receiving waters, flora or fauna of the state.

Pollution of water, water pollution, pollute the water means:

- (1) the discharge of any pollutant into any waters of the state or the contamination of any waters of the state so as to create a nuisance or render such waters unclean, or noxious, or impure so as to be actually or potentially harmful or detrimental or injurious to public health, safety or welfare, to domestic, agricultural, commercial, industrial, recreational or other legitimate uses, or to livestock, animals, birds, fish or other aquatic life; or
- (2) the alteration made or induced by human activity of the chemical, physical, biological, or radiological integrity of waters of the state.

Regulated substance means a hazardous material or hazardous waste.

Remediation means cleanup or any other set of actions, methods, or controls, such as biological, chemical, thermal or physical, used to treat, remove, contain, stabilize, cap, isolate or substantially reduce the amounts of toxic materials in water, air, soil, or other media.

Risk means the predicted probability or actual frequency of an occurrence of an adverse effect or event.

Sewage means the water-carried waste products from residences, public buildings, institutions or other buildings, or any mobile source, including the excrementitious or other discharge from the bodies of human beings or animals, together with such ground water infiltration and surface water as may be present.

Sewer system means pipelines or conduits, pumping stations, and force mains, and all other constructions, devices, and appliances appurtenant thereto, used for conducting sewage or industrial waste or other wastes to a point of ultimate disposal.

Site means any tract or parcel of land, and including all buildings or structures on such lands.

Spill means the accidental or intentional spilling, leaking, pumping, pouring, emitting, or dumping into or on any land or water of hazardous wastes or materials which, when spilled, become hazardous wastes.

Standards means effluent standards, effluent limitations, standards of performance for new sources, water quality standards, pretreatment standards, and prohibitions.

Tank is a stationary device designed to contain an accumulation of regulated substances and constructed of nonearthen materials, such as concrete, steel, and plastic, that provides structural support. Tank includes bladders, rail cars, and trucks.

Temporary monitoring well is a monitoring well which is constructed and sealed within a 48-hour time frame.

Underground storage tank system means any one or a combination of containers including tanks, vessels, enclosures, or structures and underground appurtenances connected to them, that is used to contain or dispense an accumulation of regulated substances and the volume of which, including the volume of the underground pipes connected to them, is ten (10) percent or more beneath the surface of the ground.

Waters of the state means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the state or any portion thereof.

Water refers to "waters of the state," as defined in this chapter.

Watershed means all lands enclosed by a continuous hydrologic drainage divide and lying upslope from a specified water body or point.

Well means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed if the excavation is intended for the location, diversion, artificial recharge, or acquisition of groundwater. This includes monitoring wells, drive point wells, and dewatering wells. "Well" does not include:

- (1) an excavation by backhoe, or otherwise for temporary dewatering of groundwater for nonpotable use during construction, if the depth of the excavation is twenty-five (25) feet or less;
- (2) an excavation made to obtain or prospect for oil, natural gas, minerals, or products of mining or quarrying;
- (3) an excavation to insert media to repressure oil or natural gas bearing formations or to store petroleum, natural gas, or other products;
- (4) an excavation for nonpotable use for wildfire suppression activities; or five (5) borings.

Wellhead refers to a man-made physical structure or device at the land surface from or through which groundwater flows or is pumped from subsurface water-bearing formations.

Wellhead protection device is a man-made device attached to a wellhead that is intended to protect and preserve the quality of groundwater by preventing the entry of hazardous contaminants from the land surface.

- (b) Other words and abbreviations used herein which are not specifically defined in applicable federal, state or city law shall be construed in conformance with the context, in relation to the applicable section of the statutes pertaining to the matter at hand, in conformance with the principles set forth in Chapter 3 of this Code, and in conformance with professional usage. (2000-Or-017, § 1, 4-7-00; 2001-Or-114, § 1, 9-28-01; 2002-Or-169, § 1, 11-8-02; 2006-Or-040, § 1, 5-12-06; 2006-Or-050, § 1, 5-12-06; 2008-Or-096, § 1, 12-12-08)

48.20. State rules and statutes. (a) Minnesota Rules (2001), Chapters 4715, 4725, 7035, 7037, 7041, 7042, 7044, 7045, 7048, 7050, 7056, 7060, 7080, 7100, 7105, 7150, 7151, and 9220, and subsequent updates, are made part of this chapter as if fully set forth herein. Minnesota Statute 115.061 (2003), and subsequent updates, are made part of this chapter as if fully set forth herein.

- (b) Three (3) copies of the adopted state standards and regulations marked "Official Copy" shall be filed in the Office of the City Clerk and Office of the Minneapolis Watershed Management Authority in the Environmental Services Section of the Department of Regulatory Services, and remain on file for use and examination by the public. The clerk shall furnish copies of these adopted state standards and regulations at cost to any person upon request. (2000-Or-017, § 1, 4-7-00; 2002-Or-169, § 2, 11-8-02; 2004-Or-003, § 1, 1-16-04; 2006-Or-050, § 2, 5-12-06; 2010-Or-010, § 1, 3-12-10)

48.30. Compliance with other codes and laws. Compliance with the provisions of this chapter does not release a person from any responsibility to comply with any other law or regulation, whether federal, state, or local. (2000-Or-017, § 1, 4-7-00)

48.40. Conflict in orders. In the event of a conflict between an order of the city or an ordinance of the city and a valid order of a federal or state agency, the order of the federal or state agency shall govern to the extent of the conflict. (2000-Or-017, § 1, 4-7-00)

48.50. Violations. Any person who violates any provision of this chapter shall be penalized as prescribed in section 1.30(a) of this Code of Ordinances. (2000-Or-017, § 1, 4-7-00)

48.60. Minneapolis Watershed Management Authority. The authority to administer and enforce the provisions of this chapter of the Minneapolis Code of Ordinances on behalf of the city is vested in the Minneapolis Watershed Management Authority located in the Environmental Services Section of the Department of Regulatory Services. The Minneapolis Watershed Management Authority is hereafter referred to as the "authority." The authority shall have full jurisdiction to regulate and control watershed pollution as now or hereafter provided in this Code. The authority shall be under the supervision of the assistant city coordinator of regulatory services. The assistant city coordinator of regulatory services shall designate the technical, professional, and support staff that shall constitute the Minneapolis Watershed Management Authority.

48.70. Powers and duties of the Minneapolis Watershed Management Authority.

Under direction of the city council, the authority shall interpret, execute, and enforce the provisions of this chapter. Powers and duties of the authority shall include, but shall not be limited to the following:

- (1) The authority shall observe or monitor the quality of the water, land and air resources within the city, identify areas of concern in regard to environmental pollution, and take the necessary and proper corrective steps, as provided in this Code, to protect, preserve or improve the quality of the water, land or air resources.
- (2) The authority shall assist, support, cooperate, or coordinate with state and federal agencies to protect, preserve, or improve the health and safety of the citizenry, and the quality of the water, land or air resources within the city.
- (3) The authority shall work, along with other government agencies, to provide that all laws, regulations, and standards for water pollution, land pollution, and air pollution are fully enforced to protect, preserve, or improve the health and safety of the citizenry, and the quality of the water, land or air resources within the city.
- (4) The authority shall initiate, coordinate, and engage in pollution abatement activities, as authorized by this Code, to protect the environment, and public health and safety from significant, immediate, or long-term threats of environmental pollution.
- (5) The authority shall conduct investigations of complaints, and suspected violations of environmental pollution, and retain copies of complaints, suspected violations or violations on file for a reasonable amount of time, and initiate appropriate corrective actions against such complaints, or violations to protect, preserve, or improve the quality of the water, land or air resources within the city.
- (6) The authority shall, as provided by law, inspect property, structures, and facilities within the city, and collect samples of any waste discharge, spill, leak, water, soil, air, or other media at such property, structure, or facility to assure conformity to federal, state, and local laws, regulations, and standards.
- (7) The authority shall review, approve or issue plans, applications, permits, notices, certificates, or fee statements, as provided by this Code, and retain copies of plans, applications, permits, notices, certificates, fee statements, receipts, or other records on file for a reasonable amount of time.
- (8) The authority may offer information, technical assistance, and educational opportunities to those interested in preventing or reducing environmental pollution.
- (9) The authority may organize, coordinate, and facilitate projects, programs, or other efforts that are designed to protect, preserve, or improve the quality of the water, land or air resources within the city.
- (10) The authority shall inspect plans for the installation, storage, or removal of aboveground storage tanks, and issue or suspend permits or registrations for

aboveground storage tanks, as provided by this Code.

- (11) The authority shall administer the Minneapolis Delegated Well Program including: processing well applications, issuing permits, conducting field inspections, collecting fees, and code enforcement pursuant to any City Delegation Agreement with the state.
- (12) The authority shall coordinate the city's relationships with watershed management organizations regarding regulatory policy and environmental protection. (2000-Or-017, § 1, 4-7-00; 2002-Or-169, § 3, 11-8-02)

48.80. Pollutants prohibited. Pollutants and levels of pollutants prohibited by this chapter shall include those prohibited by federal and state laws, regulations, and standards. Materials, substances, or wastes, or any by-products of such materials, substances, or wastes that have the potential to act as a pollutant, shall include, but shall not be limited to the following: garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, oil, tar, chemicals, dredged spoil, solid waste, incinerator residue, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, cellar dirt, municipal waste, agricultural waste, sewage or industrial waste, and all other substances not included within the definitions of sewage and industrial waste. (2000-Or-017, § 1, 4-7-00)

48.90. Dilution prohibited. It shall be unlawful for any person to attempt to dilute any quantity of discharge to meet compliance standards or to lessen the perceived hazard of a leak or spill. (2000-Or-017, § 1, 4-7-00)

48.100. Public nuisance prohibited. No person who owns, manages, controls, participates or has direct involvement in the operation of a device, event, practice, or site shall deliberately, inadvertently, or through an unauthorized act of third person, perform an action or allow or cause a discharge, spill or leak of any pollutant, or material or substance, which by its nature, size, quantity, concentration, location, duration or interaction with other materials, contributes to the physical, chemical, biological, aesthetic, or other alteration of waters of the state, land, air or other media upon discharge, spill, or leak, thereby contributing to one or more of the following:

- (a) Rendering harm to the environment;
- (b) Rendering harm to the health and safety of living organisms;
- (c) Creating objectionable odors in the atmosphere;
- (d) Intruding upon the aesthetic quality of the environment;
- (e) Impeding the effectiveness of disposal systems;
- (f) Damaging property;
- (g) Interfering unreasonably with the enjoyment of life or property; or
- (h) Impairing the usefulness of such waters of the state, land, air, or other media for

domestic, industrial, commercial, agricultural, or recreational applications, or other legitimate uses.

- (i) Such conduct shall constitute a public nuisance for the purposes of this Code. (2000-Or-017, § 1, 4-7-00)

48.110. Lawful entry. (a) No person shall in any manner hinder, obstruct, delay, resist, prevent, or in any way interfere or attempt to interfere with the city or authorized personnel engaging in the performance of any such duty herein enjoined by refusing to permit such personnel to perform their duty or refusing such personnel lawful entrance to any premises when entry was legally made as a result of consent, pursuant to a search warrant, pursuant to the open fields doctrine, pursuant to the emergency entry doctrine, or pursuant to other legal means.

- (b) If the city or authorized personnel determines that the risk posed by a violation or suspected violation of this chapter presents a substantial and imminent threat to the environment or public health and safety which requires swift corrective actions, and the city or authorized personnel determines that the urgency and necessity of the situation makes it not reasonably possible to obtain either consent or a search warrant to allow entry to timely take such corrective action, including, but not limited to abatement of environmental pollution, the city or authorized personnel shall have the right to make entry to the premises which is reasonable under the circumstances for the purpose of taking such swift corrective action. (2000-Or-017, § 1, 4-7-00)

48.115. Lawful removal of contamination sources. If the city or authorized personnel determine that the risk posed by a violation or suspected violation of this chapter presents a substantial and imminent threat to the environment or public health and safety which requires swift corrective actions, and the city or authorized personnel determines that the urgency or necessity of the situation makes it not reasonably possible to obtain either consent or an appropriate court order, the city or authorized personnel shall have the right to remove the source of the threat, including but not limited to impounding motor vehicles and removing tanks or other hazardous containers. (2002-Or-169, § 4, 11-8-02)

48.120. Aboveground storage tanks for regulated substances. (a) No person(s) shall install, abandon, or remove any aboveground storage tank of two hundred and fifty (250) gallons (or pounds for propane) or more in size without first filing a tank installation, abandonment or removal application, paying the authority all permit fee(s) required by section 48.310, and obtaining the proper tank permit from the authority.

- (b) Persons that store regulated substance(s) aboveground shall provide reasonable protection against spills or leaks of such regulated substance(s) from entering into the municipal stormwater system, sanitary sewers, or waters of the state, through the use of best management practices to the extent they are technologically achievable to prevent and reduce such pollution.
- (c) Flammable liquids. Outside aboveground storage of a flammable liquid(s) in excess of five hundred (500) gallons shall not be allowed within three hundred (300) feet of a

residential structure.

- (d) Liquid propane. Propane tanks used or stored at a single location for less than six (6) months shall be exempt from permitting requirements.
- (e) Authority shall have the right to inspect all tank locations before, during, and after installation, removal, and abandonment. Applicant shall notify the authority not less than forty-eight (48) hours prior to installing, removing, or abandoning a tank to arrange a site inspection.
- (f) Upon aboveground storage tank removal or abandonment, all associated fill, vent, and product lines must be removed, regardless of tank size or use. Exceptions to this requirement are tanks that are being replaced within thirty (30) days. (2002-Or-169, § 6, 11-8-02)

48.125. Registration of regulated substance storage. (a) No person(s) shall allow or maintain any storage of regulated substances in excess of two hundred fifty (250) gallons without first having registered such storage with the authority and paying the annual registration fee(s) required by section 48.310. A separate registration shall be required for each container of 250 gallons or more. For a site containing multiple smaller containers a registration shall be required for each multiple of 250 gallons rounded downward to the nearest whole number. All storage taking place at residential buildings or properties with three (3) or less dwelling units are exempt from registration fees.

- (b) Liquid propane tanks used or stored at a single location for less than six (6) months shall be exempt from registration fees. (2002-Or-169, § 7, 11-8-02; 2006-Or-050, § 4, 5-12-06)

48.130. Underground storage tanks for regulated substances. (a) At least thirty (30) days before beginning installation of any underground storage tank regulated by the state, owner and operators must notify the authority of their intent to install the underground storage tank system and pay a filing fee required by section 48.310. Notification can be a copy of the state form, or the city supplied form. Notification must include type of tank system to be installed, method of cathodic protection, and release detection.

- (b) At least ten (10) days before beginning either removal, abandonment, or switching the stored material to or from a regulated substance, owners and operators of an underground tank must notify the authority of their intent to remove, abandon or change-in-service, and pay a filing fee required by section 48.310.
- (c) Upon underground storage tank removal or abandonment, all associated fill, vent, and product lines must be removed, regardless of tank size or use. Exceptions to this requirement are tanks that are being replaced within thirty (30) days.
- (d) Authority shall have the right to inspect all tank locations before, during, and after installation, removal, or abandonment. Applicant shall notify the authority not less than forty-eight (48) hours prior to installing, removing, or abandoning any underground storage tank to arrange a site inspection. (2000-Or-017, § 1, 4-7-00; 2002-Or-169, §§ 8,

48.140. Soil sampling required for storage tank closure. When any regulated substance storage tank in excess of one thousand one hundred (1,100) gallons is removed or abandoned in place, soil samples shall be taken at time of removal/abandonment as described below. Tanks that have external release detection, and have been operated according to the requirements of Minnesota Rules Part 7150.0330 shall be exempt. Within forty-five (45) days a report shall be submitted to the authority documenting the presence or absence of any contaminant release.

- (1) For tanks less than ten thousand (10,000) gallons in size, at least one (1) soil sample shall be taken under the center of the tank, one (1) to two (2) feet below the floor of the tank excavation.
- (2) For tanks greater than ten thousand (10,000) gallons in size at least two (2) soil samples shall be taken near the base of the tank, one (1) below the fill pipe and the other on the opposite end.
- (3) In addition to the sampling required in (1) and (2), a soil sample shall be taken five (5) feet below each dispenser island, where the dispenser island is not located over the tank basin.
- (4) Compliance with this section shall not imply absence of contamination at tank site. (2002-Or-169, § 10, 11-8-02)

48.145. Fuel oil tanks less than one thousand one hundred (1,100) gallons. (a) At least fifteen (15) days before beginning installation, removal or abandonment, of a fuel oil tank less than one thousand one hundred (1,100) gallons, the owner and operators must submit a permit application to the authority, pay a filing fee required by section 48.310, and receive a permit.

- (b) Fuel oil tanks less than one thousand one hundred (1,100) gallons may only be abandoned when removal of the tank would undermine the structure. In these circumstances, the permit application must be submitted along with a letter from a licensed engineer stating that the tank cannot be safely removed.
 - (c) Upon underground storage tank removal or abandonment, all associated fill, vent, and product lines must be removed, regardless of tank size or use. Exceptions to this requirement are tanks that are being replaced within thirty (30) days.
 - (d) Authority shall have the right to inspect all tank locations before, during, and after installation, removal, or abandonment. Applicant shall notify the authority not less than forty-eight (48) hours prior to installing, removing, or abandoning any underground storage tank to arrange a site inspection.
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- (e) At least one soil sample must be taken, with the abandonment or removal of any fuel oil tank greater than two hundred fifty (250) gallons. A summary report must be submitted to the authority within forty-five (45) days. (2002-Or-169, § 11, 11-8-02)

48.150. Underground storage tanks not in service. (a) Underground tanks which

contain regulated substances and are not in active service for more than ninety (90) days shall be treated as "temporarily out of service" by taking the following steps:

- (1) Notify the authority of intent to so render the tank.
 - (2) Secure the fill line cap and discharge line against tampering and product leakage.
 - (3) Assure that the vent line is open.
 - (4) Continue the operation and maintenance of corrosion protection.
 - (5) Continue operation of release detection method, unless the tank is purged.
- (b) An underground tank left in "temporarily out of service" condition in excess of twelve (12) months, shall pay an annual registration fee as established in section 48.310. (2002-Or-169, § 12, 11-8-02)

48.160. Annual chemical inventory registration. (a) Any owner or operator of land, buildings, or structures where a daily inventory of chemicals is maintained exceeding minimum thresholds as identified in section 48.170 shall obtain an annual chemical inventory registration for their facility.

- (b) The fees for an annual chemical inventory registration shall be as established in section 48.310 of this chapter.
- (c) Each registration application shall include the following information:
- (1) Identification of local site contact responsible for the annual chemical inventory registration at the facility site.
 - (2) Identification of a twenty-four-hour contact responsible for the annual chemical inventory registration at the facility site.
 - (3) Identification of all chemicals identified in 48.170.
 - (4) Listing of storage quantities and capacity of storage of all chemicals identified in 48.170.
 - (5) Site map identifying interior and exterior chemical storage areas, buildings, site access, local streets, floor drains, area drains, and area catch basins that drain to the city storm water drainage system and site topography identifying site drainage patterns.
 - (6) Such other information relating to chemical storage on the site and the identification of the persons involved as the director of operations and regulatory services or their designee may prescribe. (2001-Or-114, § 4, 9-28-01; 2002-Or-169, § 16, 11-8-02; 2007-Or-098, § 1, 12-21-07)

48.170. Minimum thresholds for annual chemical inventory registration. An annual chemical inventory registration pursuant to this chapter shall be obtained when any of the following amounts are met or exceeded or the specified condition is met:

- (1) Any chemical for which a Material Safety Data Sheet (MSDS) is required by the

United States Occupational Safety and Health Administration (OSHA) and which is stored in amounts equal to or greater than ten thousand (10,000) pounds. The amount of a chemical stored means the total amount of the chemical present at any one (1) time at a facility regardless of location, number of containers, or method of storage.

- (2) Any chemical identified as an extremely hazardous substance that exceeds its threshold planning quantity as list in the Code of Federal Regulations, Title 40 Protection of the Environment, Part 355 Emergency Planning and Notification, Appendix A - The list of Extremely Hazardous Substances and their Threshold Planning Quantities. (2001-Or-114, § 5, 9-28-01; 2002-Or-169, § 17, 11-8-02; 2007-Or-098, § 2, 12-21-07)

48.180. Reserved.

Editor's note: Ord. No. 2007-Or-098, § 3, adopted December 21, 2007, repealed § 48.180, which pertained to extremely hazardous substances. See also the Code Comparative Table.

48.190. Investigation of environmental contamination. (a) To determine or confirm the constitution, quantity, or concentration of waste being discharged, spilled or leaked into the air, water, land, other media, or disposal systems of the city, and the cause and extent of any environmental contamination, the authority may require persons who own, manage, control, or have direct involvement in the operation of a device, event, practice, or site wherein a discharge, leak or spill of pollutants has occurred to furnish any and/or all sampling reports, records, data files, or other information related to the spilled, leaked or discharged material or processes, including maintenance records for all equipment involved in all discharge activities, spills or leaks, and to conduct an investigation into the cause or extent of any environmental contamination. The authority shall specify exact reporting requirements and due dates in compliance directives or orders. Persons shall have a thirty-day period to submit complete, accurate, legible, and organized reports to the authority. Any failure to do so is a violation of this chapter.

- (b) Sites that are determined to have contaminated soil or groundwater, or in the Authority's opinion, it is determined that there is a high probability that such conditions exist, must be secured from tampering and trespass, if such acts would pose a risk to the individual or community. The person with control of the site must ensure that the remediation-site and all its equipment and structures will remain physically secure from intruders to prevent exposure to harmful contaminants, accidental releases of toxic substances, or unauthorized acts of third persons. (2000-Or-017, § 1, 4-7-00; 2002-Or-169, § 5, 11-8-02)

48.200. Authority to order abatement activities. (a) The authority may order the abatement of environmental pollution when the authority determines that such pollution poses a significant and immediate threat to the environment, and/or public health and safety. Abatement may include, but is not limited to: immediate action to stop or contain the spill or discharge, sampling and testing; implementing technical controls or processes; or proper cleanup and disposal of all contaminated material.

- (b) Facility operations or discharges may be interrupted when these are determined by the authority to be contributing sources of the pollution.
- (c) Responsible parties and other individuals in a position to render assistance are required to take whatever actions are necessary under the circumstances as they exist to stop and contain any spill or discharge in the best way possible so as not to be detrimental to the environment.
- (d) In cases where the responsible party or property owner fails to perform appropriate abatement measures or if the site conditions present a substantial and imminent threat to the environment, public health and safety and swift corrective action is deemed necessary by the city or authorized personnel, the city or authorized personnel may perform necessary abatement, with all costs billed back to the responsible party pursuant to section 48.210. (2002-Or-169, § 19, 11-8-02)

48.210. Billing of costs. Any costs of abatement and cleanup associated with emergency response actions taken by the city, including, but not limited to: sampling, analyses, abatement, emergency actions, legal expenses, cost of materials and equipment, and labor costs, shall be borne by the owner of the property at which the incident occurred, or by the owner of the device causing the incident. If such person fails to pay, costs will be assessed per section 48.220. (2002-Or-169, § 20, 11-8-02)

48.220. Assessing of costs. If all costs, as set out in section 48.210 are not paid by the responsible person(s) in accordance with the due date posted, such facts shall be reported to the city council. All costs, including an administrative fee, incurred by the city under section 48.210 shall be assessed, levied and collected as a special assessment payable in one sum or by up to ten (10) equal annual installments as the council may provide against the premises from which it was removed, in the manner provided for in this section. When the city takes a response action under this chapter, the authority shall mail to the property owner a notice of intent to assess the costs of said action. Such notice shall state the amount and basis for the costs and the time, date and place of a hearing before a hearing officer appointed by the council to determine the validity and amount of the proposed assessment. The notice may require, as a prerequisite to an owner's challenge of an assessment, that the owner file written objections to the assessment no later than ten (10) days before the hearing. The notice shall state that the owner may appeal the assessment to the district court within thirty (30) days after the adoption of the assessment by the council at an annual meeting. The notice shall also inform the owner of the provisions of Minnesota Statutes, Sections 435.193 to 435.195 and of the existence of any deferment procedure. (2002-Or-169, § 21, 11-8-02)

48.230. Registration of contaminated sites. (a) Any person(s) in control of any contaminated site within the City of Minneapolis shall register that site annually with the authority.

- (b) A contaminated site for the purpose of this section is any parcel of land where soils

and/or groundwater have been contaminated by various substances and which has been reported to the Minnesota Pollution Control Agency (MPCA) or the United States Environmental Protection Agency (U.S. EPA) as a contaminated site. These sites shall include but shall not be limited to those sites which have been administratively listed pursuant to Minnesota Statutes Chapter 115C, the Petroleum Tank Release Cleanup Act; Minnesota Statutes Chapter 115B, the Minnesota Environmental Response and Liability Act; those sites administratively listed pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended (42 U.S.C., Section 9601 et. seq.), those sites participating in the MPCA administered Voluntary Investigation and Cleanup Program, those sites administratively listed as a result of soil or groundwater contamination with the Minnesota Department of Agriculture, and those sites which are administratively placed on the federal superfund list known as CERCLIS.

- (c) Except where specifically noted in this section, any person(s) in control of any contaminated site shall pay the annual fee(s) for each site registered as required by section 48.310. Registration fees are not required for those sites enrolled in the MPCA administered Voluntary Investigation and Cleanup Program provided the participating party was not the source of contamination at any time and continues to make progress toward cleaning the site, and for those sites that have been a contaminated site within the meaning of this section for less than one (1) year.
- (d) Annual registration is not required for sites where remediation has been certified complete by the MPCA or U.S. EPA. It shall be the responsibility of all person(s) in control of such sites to provide the Authority with documentation stating that MPCA or U.S. EPA has determined the site closed and sufficiently remediated so that no further cleanup actions are required. If a closed file is reopened by the MPCA or U.S. EPA the site shall again be registered. (2000-Or-017, § 1, 4-7-00; 2002-Or-169, §§ 13, 22, 11-8-02)

48.240. On-site remediation. (a) No person shall conduct or perform any on-site remediation as defined in 48.10 without having obtained an on-site remediation permit from the authority. On-site remediation may include, but is not limited to: excavation and removal of contamination, grading, thermal evaporation treatment, closed chamber burning, microbial treatments, thin spreading, soil venting, soil capping, soil burning, or other substance recovery or disposal systems.

To apply for an on-site remediation permit from the authority, person(s) shall pay the authority all permit fee(s) required by 48.310, and submit a plan that details the proposed action for the on-site remediation. For sites considered contaminated by the Minnesota Pollution Control Agency, or sites suspected of being contaminated, a copy of the state-approved remediation plan must be submitted. If the remediation system will be discharging to the sanitary sewer a copy of the Metropolitan Council discharge permit must be provided. In addition, any information deemed necessary by the authority must be provided.

The authority shall review the plan and may require the applicant to perform modifications to the on-site treatment remediation system to assure conformity to city ordinance, in so far as such modifications are not in conflict with state or federal requirements. On-site remediation permits shall be issued by the authority pursuant to a review of the following information, as appropriate to the site, contained in the plan:

- (1) The objectives of the remediation.
- (2) Descriptions of the contaminated site, including topographic and geologic characteristics, the presence of utilities and structures on the site, and relative location of human populations at risk.
- (3) The types, amounts, and extent of the contamination and its potential for mobility from the site.
- (4) Descriptions of how the remediation will be implemented, its compatibility with the contaminants including the potential to generate hazardous secondary chemical species such as flammable or explosive vapors, and estimates of contaminant amounts that will be emitted to the air, discharged to the waters of the state, or excavated, treated on-site and/or transported off-site for treatment and/or disposal.
- (5) The measures being implemented that will protect the exposed treatment area or contaminated storage areas from weather conditions that may cause hazardous substances to migrate or be released.
- (6) Designs for run-off collection systems.
- (7) The adequacy of the emergency response plan to address accidental discharges, leaks, or spills of extracted toxins or other toxic materials to the environment.
- (8) Capacity limitations for all equipment, machinery, storage vessels, or any other materials involved in the remediation operations to prevent injury to workers and accidental releases of toxins to the environment.
- (9) Time requirements for the remediation to be completed.
- (10) Projected public concerns and how they will be addressed.
- (11) Actions taken to ensure that the remediation-site and all its equipment and structures will remain physically secure from intruders to prevent exposure to harmful contaminants, accidental releases of toxic substances, or unauthorized acts of third persons.
- (12) Names and contact information for all persons conducting the remediation activities, including contact information for an individual or company available to respond on a twenty-four (24) hour basis.

(b) Emergency contact information shall be posted on-site in an area clearly visible from the public right-of-way. The sign should be outside of any locked buildings or other structures. The listed contact shall be an individual or company available to respond on a twenty-four (24) hour basis.

(c) Issuance of an on-site treatment permit does not eliminate the need for additional permits required by this Code or other governmental agencies. These additional permits may include, but are not limited to: fire, electrical, erosion control, work, demolition, new construction, well installation, tank installation and removal, and water discharge permits.

(d) The city or authorized personnel may inspect remediation-sites prior to, during, and at the close of all remediation activities. If at any time over the course of the remediation the city

or authorized personnel identifies problems with the remediation activities including, but not limited to, potential environmental impacts or public health and safety concerns, the city shall have the power to require additional permits and/or remediation at the site. Notification of city required changes shall be submitted in writing to the person(s) indicated as responsible for remediation activities on the permit application.

(e) If upon inspection by city authorized personnel, remediation activities are found to pose an immediate and substantial threat to the environment and/or public health and safety, the authority shall have the power to immediately suspend operations until the Minnesota Pollution Control Agency can be consulted and the threat has been addressed.

(f) Applicant(s) must pay to the authority the annual registration fee(s) required by section 48.310.

(g) Any alterations or additions required by the city shall not conflict or detrimentally effect the operation of any remediation activity required by the Minnesota Pollution Control Agency or the United States Environmental Protection Agency. (2002-Or-169, § 23, 11-8-02; 2006-Or-050, § 5, 5-12-06; 2008-Or-096, § 2, 12-12-08)

48.250. Use of unregulated soil. (a) No person shall bring in to the city or use any soil or fill in the city unless it is clean granular fill with an average diameter of one (1) inch or less.

(b) When approved by the state and with prior approval by the authority, contaminated soil may be placed back into an excavation on the same site, provided it is consistent with development on the site. (2002-Or-169, § 24, 11-8-02)

48.260. Wells. (a) Where not previously defined, terminology used in this section shall have the meanings given in Minnesota Statutes, Section 103I.05 and Minnesota Rules, Chapter 4725.

(b) No person shall construct, modify or reconstruct any well without first having filed a well construction application and receiving written approval from a licensed well inspector for the City of Minneapolis. Interim verbal approval may be given, provided the permit has been processed, and is received by the applicant within five (5) days of verbal approval. The permit must note that verbal approval was given and the date of such approval. For each type of well to be constructed, modified or reconstructed including, but not limited to: monitoring wells; recovery/remediation wells; domestic drinking water wells; nontransient, noncommunity public water supply wells; air cooling wells; industrial wells; noncommunity public supply well, or irrigation wells, the applicant shall pay the permit fee(s) required by section 48.310 to the authority. This fee is in addition to the state core function fee as established in Minnesota Statutes, Section 103I.208, Subd. 1a.

(c) Any person that owns a monitoring well, a recovery well/remedial well, or an out of service well within the city shall register each well with the authority and pay the authority the annual registration fee(s) required by section 48.310.

(d) No person shall seal any well without first filing a well sealing application, receiving written approval from a licensed well inspector for the City of Minneapolis and paying the authority all permit fee(s) required by section 48.310 for all wells including, but not limited to monitoring wells; recovery/remediation wells; domestic drinking water wells;

nontransient, noncommunity public water supply wells; air cooling wells; industrial wells; noncommunity public supply well, or irrigation wells. Temporary monitoring wells are exempt from the fee(s). The fee is in addition to the state core function fee as established in Minnesota Statutes, Section 1031.208, Subd. 1a. Interim verbal approval may be given, provided the permit has been processed, and is received by the applicant within five (5) days of verbal approval. The permit must note that verbal approval was given and the date of such approval.

- (e) Persons constructing temporary monitoring well(s) shall provide notification to the authority by filing a well sealing application with the authority.
- (f) No person shall damage, tamper, or take any action that compromises the functionality or integrity of a wellhead protection device. Any earthwork, construction, demolition, or other activity conducted within a wellhead protection area that has the potential to damage wellhead protection devices or disturb wellhead protection areas and thereby open a portal of entry and cause contamination or create a risk of contamination shall constitute a violation of this chapter.
- (g) A request for a variance from specific requirements of the standards contained in Minnesota Rules, Chapter 4725 must be reviewed by the State Commissioner of Health pursuant to Minnesota Rules, Chapter 4717.7000. If the request for variance is approved by the Commissioner of Health, the city shall allow construction, reconstruction or sealing of the well pursuant to the conditions of the Commissioner's approval.
- (h) For wells for which no owner information can be located by the authority, the owner of the property on which the well is located shall become responsible for the well. Such responsibility shall include, but not be limited to, registration and proper sealing. (2002-Or-169, § 25, 11-8-02)

48.270. Oil/water separators and sediment trap permit and registration fees. (a)

No person(s) shall install, remove or maintain an oil/water separating device or sediment trap without notifying the authority and paying the permit and annual registration fee(s) as required by section 48.310.

- (b) Each oil/water separator and sediment trap shall be cleaned by applicant(s) once a year or as required to maintain the integrity of the system, or as required by the authority. Records of this and other maintenance activities performed on the separator shall be kept on-site for not less than three (3) years. These records shall be made available to the authority upon written or verbal request. (2002-Or-169, § 26, 11-8-02; 2006-Or-050, § 6, 5-12-06)

48.280. Industrial waste generator. (a) No person(s) shall generate industrial waste on-site without notifying the authority and paying the annual registration fee(s) required by section 48.310.

- (b) All industrial waste shall be properly removed and transported by a state licensed hauler. Documentation of proper disposal of all industrial waste must be maintained on-site for not less than three (3) years.
- (c) All handling and storage of industrial waste must be conducted in accordance with State

48.290. Motor vehicles. (a) All vehicles operated or parked in the city shall not cause significant pollution to soil or water resources.

- (b) The city or other authorized personnel may impound, with seventy-two (72) hours notice, those vehicles that are found to be leaking hazardous materials or waste. If the vehicle in question is parked in a public right of way or poses an imminent and substantial threat to the environment or public health, the city or other authorized personnel may immediately impound the vehicle. Vehicles may be redeemed as provided in section 478.1046 of this Code. (2002-Or-169, § 28, 11-8-02)

48.300. Contaminated material storage. (a) Any and all manufactured materials that have been in contact with pollutants, including but not limited to lubricating oils, cutting fluids, and marking dyes, must be stored inside a building or structure in such a manner as to prevent deposition of pollutants to the land and discharge to the storm drains.

- (b) No person(s) shall stockpile contaminated soil in excess of five (5) cubic yards without submitting an application and receiving a permit from the authority. To apply for an on-site contaminated soil storage permit from the authority, all such person(s) shall pay to the authority all permit fee(s) required by 48.310, and submit a plan and details of the proposed action. The soil must be placed on an impervious surface and covered with plastic and shall not be stored for more than ninety (90) days. Stockpiling is to be considered a temporary condition and at time of application plans must be submitted for final treatment or disposal of contaminated soil. Failure to obtain a permit or maintain the condition of the stockpile is a violation of this chapter. (2002-Or-169, § 29, 11-8-02; 2006-Or-050, § 7, 5-12-06)

48.310. Permitting and annual fees. (a) For the equipment specified below applicant(s) shall pay the permitting fee as established in the director's fee schedule pursuant to section 91.70 upon application and an annual fee as established in Appendix J, License Fees Schedule.